

**STATE OF CALIFORNIA
REGIONAL WATER QUALITY CONTROL BOARD
LOS ANGELES REGION**

In the matter of:)	Compliant No. R4-2004-0011
)	for
Toll, CA, L.P., VI)	Administrative Civil Liability
5301 ½ Upland Road)	
Camarillo, CA 93012)	

YOU ARE HEREBY GIVEN NOTICE THAT:

1. Toll, CA, L.P., VI (hereafter the Permittee) is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, Los Angeles Region (Regional Board), may impose liability under section 13385 of the California Water Code (CWC).
2. Unless waived, a hearing concerning this Complaint will be held before the Regional Board or a Hearing Panel within ninety days after service of this Complaint on the Permittee. The Permittee will be notified at least ten days in advance of the date, time and place of the Hearing. The Permittee or Permittee's representative will have an opportunity to appear and be heard, and to contest the allegations in this Complaint and the imposition of civil liability by the Regional Board.
3. The Regional Board will consider whether to affirm, modify or reject the proposed administrative civil liability or to refer the matter to the Attorney General for recovery of greater judicial civil liability.
4. In the event that the Permittee fails to comply with the requirements of this Complaint, the Executive Officer is authorized to refer the matter to the Office of the Attorney General for enforcement.

THE FOLLOWING FACTS ARE THE BASIS FOR THE ALLEGED VIOLATIONS:

5. The Permittee's 87-acre construction site in Camarillo, California, located on Woodcreek Road / Upland Road, and identified by WDID number 456C318000, is subject to the requirements of the NPDES General Permit for Storm Water Runoff Associated with Construction Activity, State Water Resources Control Board Order No. 99-08-DWQ, NPDES No. CAS000002 (General Permit). The General Permit requires the Permittee to develop and implement a Storm Water Pollution Prevention Plan (SWPPP) for each construction site (General Permit SECTION A). The General Permit also requires that the SWPPP remain on site during working hours while the site is under construction (General

Permit SECTION A.3), and that the SWPPP must be provided to the Regional Board upon request (General Permit SECTION A.15).

6. The Permittee is in violation of the Permit due to the following: an incomplete SWPPP; and failure to implement effective Best Management Practices (BMPs) contrary to statements in the SWPPP.
 - a) On March 5, 2003, Regional Board staff (Sean Lee) inspected the site. During the inspection, staff observed:
 - i. § A-(SWPPP): The SWPPP lacked a site map showing drainage areas and anticipated discharge locations, a construction activity schedule, designation of responsible parties for long-term maintenance of post-construction BMPs, a maintenance schedule for BMPs, a program to inspect and maintain BMPs, sediment tracking control BMPs and contractor & subcontractor list;
 - ii. § A.6-(Erosion Control): The Permittee failed to implement erosion control measures specified in its SWPPP, as evidenced by severe erosion along some slopes at the site;
 - iii. § A.8-(Sediment Control): The Permittee failed to implement BMPs specified in its SWPPP, as evidenced by inadequate detention and de-silting basin sediment controls and broken sandbags.
 - b) On March 7, 2003, the Regional Board issued a Notice of Violation (NOV) to the Permittee for an incomplete SWPPP and failure to implement effective erosion and sediment control BMPs cited in the SWPPP. In the NOV, staff warned the Permittee of the penalties for violations of the General Permit. The NOV also required that a completed and revised SWPPP be submitted to the Regional Board by April 7, 2003. The Regional Board did receive a completed SWPPP for the Permittee's site on April 11, 2003, and it was determined to be adequate.
 - c) On April 29, 2003, Regional Board staff and County staff performed a follow-up inspection and observed:
 - i. § A.8-(Sediment Control): The Permittee failed to replace broken sandbags, clean accumulated sediment near a storm drain inlet and implement effective sediment tracking control BMPs on the construction entrance;
 - ii. § A.6-(Erosion Control): The Permittee failed to implement effective wind erosion control BMPs on an exposed soil pile;

- iii. § A.5-(General Housekeeping Practices): The Permittee failed to contain potential pollutant sources such as cement, concrete wastes, and oil buckets at the site.
- d) On May 2, 2003, the Regional Board issued a second NOV to the Permittee for failure to implement effective sediment, sediment tracking, wind erosion control BMPs, and good housekeeping practices cited in the SWPPP. In the NOV, staff warned the Permittee of the penalties for violations of the General Permit. The NOV also required that documentation that corrective actions were taken be submitted to the Regional Board by May 14, 2003.
- e) On May 21, 2003, the Permittee certified, in a letter dated May 13, 2003, that it took all corrective actions.
- f) On December 12, 2003, Regional Board staff and the City of Camarillo staff jointly performed rainy season follow-up inspection. During the inspection, Regional Board staff observed:
 - i. § A.6-(Erosion Control): The Permittee failed to implement effective erosion control BMPs on some slopes and implement effective wind erosion control BMPs on exposed soil piles;
 - ii. § A.8-(Sediment Control): The Permittee failed to replace broken sandbags and fallen-down silt fences;
 - iii. § A.5-(General Housekeeping Practices): The Permittee failed to contain potential pollutant sources such as a concrete mixer at the site.
- 7. Section 13385 of the California Water Code (CWC) provides that any person who violates waste discharge requirements issued pursuant to the Federal Clean Water Act shall be civilly liable. Section 13385 (c) provides that civil liability may be administratively imposed by a Regional Board in an amount not to exceed ten thousand dollars (\$10,000) per violation for each day the violation occurs.
- 8. Based on the site inspections and the filing date of the NOI, the Permittee has been in violation of SECTION A.1 of the General Permit for failure to develop a complete SWPPP for the site from May 7, 2002 (the NOI filing date) through April 11, 2003 (date the Regional Board received a copy of a completed SWPPP), and is civilly liable for a total of 339 days of violation. Also, the Permittee has been in violation of SECTION A.5, 6, and 8 of the General Permit for failure to implement, maintain and improve BMPs on site from May 7, 2002 through June 17, 2004 (date the Regional Board issued Administrative Civil Liability), and is civilly liable for a total 772 days of violation. The total maximum liability that may be assessed for these violations is \$11,110,000 as follows:

MAXIMUM CIVIL LIABILITY

Penalty Category	Calculation	Total
<i>For failing to comply with Order No. 99-08-DWQ by not developing and retaining a completed SWPPP</i>	Water Code section 13385 (c)(1): (339 days) X \$10,000/day	\$3,390,000
<i>For failing to comply with Order No. 99-08-DWQ by not implementing and maintaining effective BMPs</i>	Water Code section 13385 (c)(1): (772 days) X \$10,000/day	\$7,720,000
POTENTIAL MAXIMUM ACL		\$11,110,000

9. In determining any liability to be imposed, CWC section 13385 (e) requires the Regional Board to consider the following factors:
- Nature, circumstances, extent, and gravity of the violations: The Permittee operated without a completed SWPPP for the site for at least 339 days. A SWPPP mandates the use of appropriately selected, correctly installed and maintained pollution reduction BMPs. Therefore, no reduction in the civil liability is warranted.
 - Susceptibility of the discharge to cleanup or abatement: The discharge of construction pollutants (such as sediment) is not easily cleaned-up once it has been released into the Flood Control Channel. Therefore, a reduction from the maximum civil liability is not warranted.
 - Degree of toxicity of the discharge: The discharge of construction pollutants violated water quality objectives in the Basin Plan. Total Suspended Solids (TSS) that exceeded the benchmark for TSS were discharged to a tributary of the Mugu Lagoon. Mugu Lagoon is a 303(d) listed waterbody whose beneficial uses are impaired by sediment. Therefore, a reduction from the maximum civil liability may not be warranted.
 - The ability to pay: The Permittee has not provided the Regional Board any information to determine its ability to pay the maximum civil liability.

- e. Effect on the Permittee's ability to continue its business: Regional Board staff have no information to determine the impact of the proposed penalty on the Permittee's ability to continue its business.
- f. Voluntary cleanup efforts undertaken: When the BMPs installed by the Permittee failed to contain sediment-laden storm water runoff, the Permittee took efforts to remove sediment-laden storm water runoff using a water truck from its construction site. Therefore, a reduction from the maximum civil liability is warranted.
- g. Prior history of violations: On February 11, 2003, the Permittee pumped sediment-laden water from the site into a storm drain inlet without appropriate BMPs. On March 7, 2003, County staff collected a sample of the discharge, and the result indicated 120 mg/l of TSS exceeding benchmark limits for TSS. This showed the Permittee did not upgrade the BMPs at the site. Therefore, a reduction in the maximum civil liability may not be warranted.
- h. Degree of culpability: The Permittee violated the terms of the General Permit by failing to develop a completed SWPPP and implement effective BMPs, which led to a discharge of sediment to waters of the United States during the rainy season. However, the Permittee partially improved erosion control BMPs and retained a complete SWPPP on site in response to the first NOV. Therefore, a reduction from the maximum civil liability may be warranted.
- i. Economic benefit or savings: By not implementing and maintaining effective BMPs on at least 10% of its 87 acres of the site, the Permittee realized an economic savings of at least \$5,220, which breaks down:
 - i. 10% of 87 acres = 8.7 acres;
 - ii. 8.7 acres x \$600 per acre for implementation of BMPs = \$5,220;
 - iii. \$5,220 is the amount that the Permittee saved by not maintaining and implementing effective BMPs throughout its construction site for 2003.
- j. Other matters as justice may require: Staff time to prepare this Complaint is estimated to be \$4,200 (60 hours at \$70 per hour).

RECOMMENDED CIVIL LIABILITY

- 10. After consideration of these factors, the Executive Officer proposes civil liability be imposed on the Permittee in the amount of \$54,420, which includes recovery of the Regional Board's staff costs, as outlined below:

PROPOSED CIVIL LIABILITY

Penalty Category	Calculation	Total
Avoided costs: Cost to implement effective erosion, sediment, sediment tracking, wind erosion control BMPs, and housekeeping practices	\$5,220 in avoided cost, from not maintaining and implementing effective erosion sediment, sediment tracking, wind erosion control BMPs, and housekeeping practices as required by the General Permit.	\$5,220.00
Penalty	CWC SECTION 13385 \$45,000 for violations of Section A.5,6 and 8 of the General Permit for three days = 9 violations [Inspections on March 5 (3 violations), April 29 (3 violations) and December 12, 2003 (3 violations)], \$5,000 per violation (9 violations) for 3 days	\$45,000.00
Staff Costs	60 hours at \$70 per hour	\$4,200.00
	Total	\$54,420.00

11. This matter will be heard before the Regional Board or Hearing Panel pursuant to Water Code section 13323 unless the Permittee waives the hearing and pays the penalty of \$54,420 in full by July 17, 2004. The Permittee will be notified of the date, time, and location of the Hearing.
12. Notwithstanding the issuance of this Complaint, the Regional Board shall retain the authority to assess additional penalties for violations of the requirements of the General Permit for Storm Water Discharge Associated with Construction Activities, including but not limited to implementation of a SWPPP.

13. This enforcement action is exempt from the provisions of the California Environmental Quality Act, California Public Resources Code section 21000 et seq., in accordance with California Code of Regulations, title 14, section 15321.
14. The Permittee may waive the right to a hearing. If the Permittee chooses to waive the right to a hearing, an authorized agent must sign the waiver form attached to this Complaint and return the executed waiver to the Regional Board at 320 West 4th Street, Suite 200, Los Angeles, CA 90013, to be received by the Regional Board by the close of business on July 17, 2004. If the hearing is waived, the following options are available to satisfy the civil liability:
 - a. A check in the amount of \$54,420 (payable to the State Water Resources Control Board Cleanup and Abatement Account) shall accompany the signed waiver or;
 - a. The Permittee may propose to pay up to \$40,815 of the civil liability by:
 - i contributing to a SEP on the Regional Board approved SEP List at www.swrcb.ca.gov/rwqcb4/html/programs/enforcement.html, or
 - ii carrying out the Permittee's own independent SEP.

In the event that the Permittee proposes to invest in a SEP, a check in the amount of \$13,605 (payable to the State Water Resources Control Board Cleanup and Abatement Account) together with the Permittee's written statement confirming that the Permittee contributed to a SEP on the SEP List or proposes to carry out an independent SEP will be submitted along with the executed waiver and received by the Regional Board by the close of business on July 17, 2004.

If the Permittee elects to contribute to a SEP on the SEP List, the Permittee shall pay \$40,815 to the chosen SEP by the close of business on July 17, 2004, and notify the Regional Board of the date, amount and method of payment by the close of business on July 17, 2004.

If the Permittee proposes to carry out an independent SEP, a detailed description of the SEP shall be received by the Regional Board by the close of business on July 17, 2004. A proposal for an independent SEP will be subject to public notice and approval of the Regional Board. Should the Regional Board not approve the Permittee's proposal for an independent SEP, or should the Permittee later fail or elect not to implement the proposed independent SEP, the remainder of the civil liability will be due and payable within 30 days of such an event.
15. Regulations of the US Environmental Protection Agency require public notification of any

proposed settlement of the civil liability occasioned by violation of the Clean Water Act including NPDES permit violations. Accordingly, interested persons will be given 30 days to comment on any proposed settlement of this Complaint.

Dennis A. Dickerson
Executive Officer

Date_____

WAIVER OF THE RIGHT TO A HEARING

By signing below and returning this Waiver, I hereby waive the right of Toll, CA, L.P., VI to a hearing before the Regional Board to dispute the allegations and civil liability set forth in Administrative Civil Liability Complaint No. R4-2004-0011(Complaint) issued by the Regional Board Executive Officer. Toll, CA, L.P., VI understands that this Waiver gives up the rights to contest the allegations of the Complaint and the amount of civil liability it imposes.

Toll, CA, L.P., VI elects to pay the civil liability in the following manner [check the relevant boxes]:

- o Enclosed herewith in full payment of the civil liability is a \$54,420 check payable to “State Water Resources Control Board Cleanup and Abatement Account.”

Or

- o Enclosed herewith are a \$13,605 check payable to “State Water Resources Control Board Cleanup and Abatement Account” and one of the following items:
- o Proof of payment of at least \$ 40,815 to a Supplemental Environmental Project (SEP) listed on the Regional Board-approved SEP list, or
- o A detailed description of an independent SEP estimated to cost at least \$ 40,815 which is acknowledged to be subject to a noticed Regional Board hearing and approval.

Toll, CA, L.P., VI understands that this Waiver gives up the rights to argue against the allegations made by the Executive Officer in this Complaint and against imposition of, and the amount of, civil liability imposed. Toll, CA, L.P., VI also understands that if an Administrative Civil Liability Order is adopted by the Regional Board, payment in full will be due thirty days after the date of the adoption of the Order.

I hereby affirm that I am duly authorized to act on behalf of and to bind Toll, CA, L.P., VI in the making and giving of this Waiver.

Toll, CA, L.P., VI Date: _____

By: _____
(Signed name) (Printed or typed name)

Position: _____